IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.103 OF 2004

1. Shri Ramchandra Hari kawale,

and ors. .. Petitioners

Vs

1. Shri Anil Anant Karkhanis and Anr Respondents

Mr P.S.Dani, for the petitioners.

Mr Rajesh P.Behere, for respondent no.1.

CORAM : D.B.BHOSALE,J.

DATE : 23rd September, 2004.

PC:

1. Heard the learned counsel for the parties.

2. This petition challenges the order dated 5.12.2003 passed by the learned Civil Judge, Sr.Dn.,Alibag in Spl.Civil Suit No.12 of 2002, by which the application filed by the petitioners-defendants raising issue of jurisdiction, has been dismissed.

3. I have perused the impugned order and other material placed before me. Considering the prayers made in the suit and the observations made by the learned Judge in the impugned order, no case for interference in the impugned order is made out. In my opinion, interest of justice would be served if the petitioners are given

liberty to raise such issue after framing of the issues in the suit, if according to the petitioners, any of the issues, that would be framed in the suit cannot be dealt with by the learned Civil Judge, Sr.Dn. Mr Behere, learned counsel for the respondents, has not seriously opposed granting of such liberty to the petitioners. In the circumstances, this petition is disposed of by the following order:

(i) The petitioners shall have liberty to file an application for appropriate relief after framing of the issues, if the petitioners find any of the issues, that would be framed by the learned Judge, cannot be considered and dealt with by the learned Civil Judge, Sr.Dn. for want of jurisdiction. If such application is filed, same may be considered in accordance with law. While granting such liberty I shall not be understood to have examined the merits of the contentions urged by the learned counsel for the petitioners.

(D.B.BHOSALE, J.)